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## Inadmissibility and Waivers

### What is Inadmissibility?

Individuals who are inadmissible are not permitted by law to enter or remain in the United States. The Immigration and Nationality Act sets forth grounds for inadmissibility. The general categories of inadmissibility include health, criminal activity, national security, public charge, lack of labor certification (if required), fraud and misrepresentation, prior removals, unlawful presence in the United States, and several miscellaneous categories. For certain grounds of inadmissibility, it may be possible for a person to obtain a waiver of that inadmissibility. In some cases, exceptions are written into the law and no waiver is required to overcome the inadmissibility because the inadmissibility does not apply if the individual meets the exception. Examples include exceptions for aliens who have been battered, abused or subjected to extreme cruelty, who are victims of severe forms of trafficking, and who are minors.

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## Inadmissibility due to health:

The inadmissibility due to health concerns covers a range of situations. In general, they are:

1. **Those who have a communicable disease of public health significance.** The Government defines diseases that fall into this category. The following conditions are considered communicable diseases of public health significance: chancroids; gonorrhea; granuloma inguinale; infectious leprosy; lymph granuloma venereum; infectious syphilis; and active tuberculosis.
2. **Those seeking immigrant status who has failed to receive necessary vaccinations against vaccine-preventable diseases.** The law makes a person inadmissible if he or she fails to present evidence of vaccination against vaccine-preventable diseases. Some of the vaccines are specifically required by statute; the statute also gives the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), Advisory Committee for Immunization Practices, the authority to require additional vaccinations. For a list of vaccinations that are currently required, please consult the CDC's Technical Instructions in regards to Vaccinations on the CDC's website at <http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html>.
3. **Those who have or have had a physical or mental disorder with associated harmful behavior or harmful behavior that is likely to reoccur. Harmful behavior is behavior that poses, or has posed a threat to person or property.** The law doesn't provide specific examples of any conditions. A person is inadmissible if they have a physical or mental disorder and the behavior associated with the disorder may pose (or has posed and is likely to reoccur) a threat to the property, safety or welfare of the person or others. In the United States, a civil surgeon must make the assessment as outlined in the Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-related Disorders for Civil Surgeons posted by the CDC on its website and available at the following link: (<http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html>). Please note that the physical or mental disorder alone - without the associated harmful behavior - does not make an individual inadmissible.
4. **Those who are drug abusers or addicts.** Drug (substance) abuse of or addiction (medically called dependence) to any of the substances listed in Section 202 of the Controlled Substances Act may render an individual inadmissible. A civil surgeon must make the assessment whether an individual is a drug abuser or a drug addict. A new assessment by a civil surgeon is also needed to determine whether the individual's substance abuse or addiction is in remission which is relevant to an admissibility assessment. A civil surgeon must make the assessment as outlined in the Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-related Disorders for Civil Surgeons posted by CDC on its website and available at the following link: (<http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html>).

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## Inadmissibility due to criminal reasons:

The following are grounds for inadmissibility due to criminal reasons:

1. **Crimes involving "moral turpitude."** The term moral turpitude is not defined under federal law. However, courts in the United States have defined it generally as an act that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. Due to the term's complicated meaning and the various laws that must be reviewed to determine if an individual has committed a crime involving moral turpitude, consultation with an experienced immigration attorney is recommended for any person to whom this section may apply.
2. **Violation of any controlled substance law.** Any violation of any laws, foreign or domestic, relating to illegal drugs can be a ground of inadmissibility.
3. **Multiple Criminal Convictions.** Any person convicted of two or more crimes is inadmissible if the person was sentenced to five or more total years in prison (counting the sentences in the aggregate). This applies regardless of whether the crimes involved moral turpitude or the multiple convictions arose from a single trial or scheme of misconduct.
4. **Drug trafficking.** If any immigration officer "knows or has reason to believe" that a person has been involved in trafficking in controlled substances, that person is inadmissible to the United States. This includes individuals who aid, abet, conspire, or collude with others in illicit drug trafficking.
5. **Prostitution.** Any person coming to the United States to engage in prostitution, or any person who has engaged in prostitution within ten years of his or her application for a visa, adjustment of status, or entry into the United States, is inadmissible. This section also applies to those who have made a profit from prostitution.
6. **Commercialized Vice.** Any person coming to the United States to engage in any unlawful commercialized vice is inadmissible.
7. **Commission of a serious crime in the United States where a person has asserted immunity from prosecution.** Any person who has committed a serious criminal offense and is granted immunity from criminal prosecution is inadmissible if he or she leaves the United States and fails to return and submit him or herself to the jurisdiction of the federal court overseeing the criminal case.
8. **Violations of Religious Freedom.** Any person who, while serving as a foreign government official, was responsible for or directly carried out particularly severe violations of religious freedom is inadmissible.
9. **Human Trafficking.** Any person who commits or conspires to commit human trafficking, or aids, abets, or colludes with an individual who is a trafficker in the United States or outside the United States is inadmissible.
10. **Money Laundering.** Any person who is engaged, is engaging, or seeks to enter the United States to engage in an offense relating to laundering of financial instruments is inadmissible.

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### **Inadmissibility due to national security reasons:**

The following are grounds for inadmissibility due to national security reasons:

1. Any person who a Department of State consular officer, DHS immigration officer, or DOJ immigration judge, knows or has reasonable ground to believe that the non-citizen seeks to enter the United States to engage in espionage or sabotage, to attempt to overthrow the U.S. government, or to engage in any unlawful activity that person, is inadmissible.
2. Any person who a Department of State consular officer, DHS immigration officer, or DOJ immigration judge, knows or has reasonable ground to believe that the non-citizen has participated in any terrorist activities or has any association with terrorist organizations, governments or individuals, is inadmissible.
3. Any person who a Department of State consular officer, DHS immigration officer, or DOJ immigration judge, knows or has reasonable ground to believe that the person presents a threat to foreign policy or has membership in any totalitarian party that person may be inadmissible.
4. Any person who has participated in Nazi persecutions or genocide is inadmissible.

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**Inadmissibility due to likelihood of becoming a public charge:**

A person is inadmissible if he or she is likely to become a public charge. A public charge is a person who is primarily dependent on the government for subsistence. Whether or not a person is likely to become a public charge is determined by examining several factors. At a minimum, the factors that must be considered are health, family status, age, assets, employment history, and education. If after considering the totality of the individual's circumstances, the officer determines that the person is likely to become primarily dependent on the government for subsistence, that person is inadmissible as a public charge.

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**Inadmissibility due to lack of labor certification:**

This ground makes certain aliens who seek to enter permanently (as immigrants) into the United States and to work inadmissible unless the Secretary of Labor certifies that:

1. Employment of the person will not adversely affect the wages and working conditions of U.S. workers similarly employed; and
2. There are not enough U.S. workers willing, qualified, and able to do the same work.

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### **Inadmissibility due to fraud or misrepresentation**

Any person who seeks admission to the United States, a visa or other immigration travel or entry document, or any immigration benefit by fraud or willfully misrepresenting a material fact is inadmissible.

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**Inadmissibility due to prior removals and/or unlawful presence**

1. Individuals who are barred from returning to the United States because they have been in the United States for a period in excess of 180 days, during a single stay, and then departed the United States.
2. Individuals who are barred from returning to the United States because they had either been removed (or excluded or deported) from the United States or departed the United States on their own volition while a final order of removal was outstanding.
3. Individuals who were unlawfully in the United States for a total of one year (whether accrued during a single stay or multiple stays) AND then, illegally (without being inspected and admitted or inspected and paroled) reentered the United States.

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**Miscellaneous grounds of inadmissibility:**

The following are other grounds of inadmissibility:

1. Persons who entered the country illegally (without being inspected and admitted or paroled)
2. Persons who failed to attend immigration and/or removal hearings
3. Smugglers
4. Student visa abusers
5. Former U.S. citizens who renounced citizenship to avoid taxation
6. Practicing polygamists
7. Unlawful voters
8. International child abductors and relatives of such abductors

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<b>Which Application Should I Use to Apply for a Waiver of Inadmissibility if Available?</b>

**Note:** For information about the Provisional Unlawful Presence Waiver read this paragraph:

Persons with an approved immediate relative petition who are in the United States and believe they are or will be inadmissible for three or ten years upon their departure because they accrued more than 180 days of unlawful presence in the United States, may be eligible for a provisional unlawful presence waiver. The provisional unlawful presence waiver only applies to immediate relatives of U.S. citizens who are in the United States but are seeking an immigrant visa through the consular process at a U.S. Embassy or consulate abroad. Immediate relatives are spouses, children and parents of U.S. citizens.

If granted, the waiver is provisional and does not take effect until the individual leaves the United States, appears for his or her immigrant visa interview and the Department of State consular officer determines that they are otherwise admissible to the United States. The waiver only covers one ground of inadmissibility – unlawful presence. An individual who may be subject to multiple grounds of inadmissibility will not be eligible for the provisional unlawful presence waiver but may still seek a waiver through the Form I-601, Application for Waiver of Grounds of Inadmissibility, waiver process. If the individual would like to apply for a provisional unlawful presence waiver before they depart the United States, the form they should use is the Form I-601A, Application for Provisional Unlawful Presence Waiver. The individual can also visit the USCIS website at [www.uscis.gov/provisionalwaiver](http://www.uscis.gov/provisionalwaiver) to get additional information about the provisional unlawful presence process. [FAQ's about who may file a Form I-601A, Application for Provisional Unlawful Presence Waiver.](#)

**Note:** For information about waivers that can be filed with an application for adjustment of status or Temporary Protected Status (TPS), read this paragraph:

If an individual is seeking an waiver of inadmissibility while outside the United States and in connection with an immigrant visa, or if the individual is seeking adjustment of status or temporary protected status while in the United States, or if an individual is an applicant for a K or V nonimmigrant visa abroad, the form that they should use to overcome certain grounds of inadmissibility is the Form I-601, Application for Waiver of Ground of Inadmissibility. [FAQ's about who may file a Form I-601, Application for Waiver of Grounds of Inadmissibility.](#) If you are seeking adjustment, TPS, or a K or V visa, you can file the Form I-601 with your request for an immigration benefit or after you have filed your request. If you are seeking an immigrant visa, you can only file the Form I-601 after you are interviewed by a Department of State consular officer who found you to be inadmissible to the United States.

**Note:** For information about refugee status (outside the United States) or an asylee or refugee seeking adjustment of status read this paragraph:

Applicants for refugee status who are inadmissible to the United States and asylees or refugees seeking adjustment of status can apply for a waiver of inadmissibility on the Form I-602, Application by Refugee for Waiver of Grounds of Excludability.

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**Note:** If you are inadmissible to the United States and seeking: (1) a nonimmigrant visa outside the United States at a U.S. Embassy or consulate or (2) T or U nonimmigrant status, read the following paragraphs:

Applicants for nonimmigrant visas should consult with the U.S. Embassy or consulate where their nonimmigrant visas are being processed about waivers of inadmissibility that will allow them to be temporarily admitted into the United States as a nonimmigrant. Individuals seeking to be admitted to the United States in T and U nonimmigrant visa status may apply for a waiver of inadmissibility on the Form I-192, Application for Advance Permission to Enter as Nonimmigrant.

**Note:** If you are seeking LPR status based on Legalization, SAW, LIFE Act Legalization, and Legalization Class Settlement Agreements, read this paragraph:

Applicants applying for adjustment of status based on Legalization, the Seasonal Agricultural Worker program (SAW), the LIFE Act, or pursuant to a legalization class action settlement agreement can apply for a waiver on Form I-690, Application for Waiver of Grounds of Inadmissibility under Sections 245A or 210 of the Immigration and Nationality Act.

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### Form I-601, Application for Waiver of Grounds of Inadmissibility Frequently Asked Questions

#### What is the purpose of the Form I-601?

An alien who is ineligible to be admitted to the United States as an immigrant or to adjust status in the United States, and certain nonimmigrant applicants who are inadmissible, must file this form to seek a waiver of certain grounds of inadmissibility.

#### Who may file the Form I-601?

- An applicant who is outside the United States who has had a visa interview with a consular officer and was found inadmissible.
- Any applicant for adjustment of status
- K-1 or K-2 nonimmigrant visa applicant
- K-3 or K-4 nonimmigrant visa applicant
- V nonimmigrant visa applicant
- Temporary Protected Status (TPS) applicant
- Nicaraguan Adjustment and Central American Relief Act (NACARA) applicant
- Haitian Refugee Immigrant Fairness Act (HRIFA) applicant
- Violence Against Women Act (VAWA) self-petitioner
- T nonimmigrant visa holder filing for adjustment of status who is inadmissible by reason of a ground that has not already been waived in connection with the T nonimmigrant status

#### For which grounds of inadmissibility may I seek a waiver by using Form I-601?

- Health-related grounds
- Certain criminal grounds
- Immigrant Membership in the Totalitarian Party
- Immigration fraud or misrepresentation, excluding false claims to U.S. citizens
- Smugglers and being subject of civil penalty
- The 3-year or 10-year bar for being unlawfully present in the United States
- Certain grounds of inadmissibility, if filed by an applicant for TPS
- Aliens previously removed and unlawfully present after previous immigration violations, if filed by a NACARA or HRIFA adjustment applicant
- Unlawfully present after previous immigration violations, if filed by a VAWA self-petitioner

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**I Want to Know Who May File for a Provisional Unlawful Presence Waiver.**

**Can I file a Form I-601A, Application for Provisional Unlawful Presence Waiver, from outside the United States?**

No, you must be physically present in the United States at the time of filing and you must be physically present to provide your biometrics that are required as part of the provisional unlawful presence waiver request.

**Is there an age requirement for filing a Form I-601A, Application for Provisional Unlawful Presence Waiver?**

You must be at least 17 years of age at the time of filing. Unlawful presence does not begin accruing until an individual turns 18. However, due to the Department of State processing times and the scheduling of the immigrant visa interview, DHS has decided to allow individuals the option to file the waiver at age 17.

**If I am the beneficiary of an approved petition classifying me as a preference relative, can I file a Form I-601A, Application for Provisional Unlawful Presence Waiver?**

No, you must be a beneficiary of an approved petition classifying you as an immediate relative of a U.S. citizen.

**Can I file a Form I-601A, Application for Provisional Unlawful Presence Waiver, prior to paying the immigrant visa processing fee to the Department of State?**

No, you must have an immigrant visa case pending with the Department of State and must have already paid your immigrant visa processing fee.

**Can I file a Form I-601A, Application for Provisional Unlawful Presence Waiver, if I believe I am or will be inadmissible on multiple grounds or on a ground other than unlawful presence?**

No, you can only file an I-601A if you believe you are, or will be at the time of the immigrant visa interview, inadmissible based on having accrued a certain period of unlawful presence in the United States.

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## **I Want to Know Who is Ineligible to Receive a Provisional Unlawful Presence Waiver.**

### **If I have a Form I-485, Application to Register Permanent Residence or Adjust Status pending, am I eligible for a Provisional Unlawful Presence Waiver?**

No, individuals with pending applications for adjustment of status are not eligible for a provisional unlawful presence waiver. An adjustment of status applicant who is inadmissible needs to file Form I-601, Application for Waiver of Grounds of Inadmissibility. You can only seek a provisional unlawful presence waiver if you are an immediate relative (spouse, child, parent, or widow/widower) of a U.S. citizen, you are or will be inadmissible solely because of your unlawful presence in the United States, and you have an immigrant visa case pending with the Department of State for immigrant visa processing.

### **If I am in removal proceedings, am I still eligible for a Provisional Unlawful Presence Waiver?**

No, if you are in removal proceedings, you are not eligible for a provisional unlawful presence waiver unless your removal proceedings are administratively closed and have not been re-calendared.

### **If I have been ordered removed, excluded, or deported from the United States, am I eligible for a Provisional Unlawful Presence Waiver?**

No, you are not eligible if you have a final order of removal, deportation, or exclusion or were deported from the United States.

### **If I am subject to reinstatement of a prior removal order, am I still eligible for a Provisional Unlawful Presence Waiver?**

No, you are not eligible if are subject to reinstatement of a prior removal order.

### **If I have already been scheduled by the Department of State for an immigrant visa interview, am I still eligible for a Provisional Unlawful Presence Waiver?**

Whether you are eligible for a provisional unlawful presence waiver depends on when DOS initially acted to schedule your immigrant visa interview. If the Department of State initially acted prior to January 3, 2013 to schedule your immigrant visa interview for the approved immediate relative petition upon which your Form I-601A is based, then, you are not eligible for a provisional unlawful presence waiver. The actual date and time that you are scheduled to appear for your immigrant visa interview is not the date USCIS will use to determine if you are eligible to file a Form I-601A. USCIS will use the date DOS initially acted to schedule your immigrant visa interview for the approved immediate relative petition upon which your Form I-601A is based. If DOS initially acted before January 3, 2013 to schedule you for your immigrant visa interview, you are not eligible for a provisional unlawful presence waiver, even if you failed to appear for your interview or you or DOS cancelled the interview, or requested that the interview be rescheduled to a date on or after January 3, 2013.

If DOS initially acted on or after January 3, 2013 to schedule your immigrant visa interview for the approved immediate relative petition upon which your Form I-601A is based, then you may be eligible for a provisional unlawful presence waiver provided that you meet all other requirements. You should notify DOS of your intention to file the provisional unlawful presence waiver. See DOS' website at [www.state.gov](http://www.state.gov) on how to notify DOS.

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**If I cannot establish that the refusal of my admission will result in extreme hardship to my U.S. citizen spouse or parent, am I still eligible for a Provisional Unlawful Presence Waiver?**

No, you must be able to establish extreme hardship to a U.S. citizen spouse or parent.

**If there is a possibility that I may be found inadmissible under other grounds of inadmissibility, will my provisional unlawful presence waiver application still be approved?**

No, if USCIS has *reason to believe* the Department of State (DOS) may find you inadmissible at the time of your immigrant visa interview based on a ground of inadmissibility other than unlawful presence, your case will be denied.

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**I have Questions about the Application Process.**

**Will I use the current Form I-601, Application for Waiver of Grounds of Admissibility to apply for a provisional unlawful presence waiver?**

No. USCIS developed a new form for the provisional unlawful presence waiver process – Form I-601A, Application for Provisional Unlawful Presence Waiver.

**How do I apply for the provisional unlawful presence waiver?**

You apply for a provisional unlawful presence waiver by filing the Form I-601A, Application for Provisional Unlawful Presence Waiver. Make sure your application is complete, signed, and submitted with the correct application and biometric fees. Follow the I-601A application instructions and check the USCIS web site at [www.uscis.gov/forms](http://www.uscis.gov/forms) for any updates to the instructions or required fees.

You should notify the DOS that you intend to file the Form I-601A. See DOS' website at [www.state.gov](http://www.state.gov) for information on how you can notify DOS.

**Will I have to be fingerprinted or appear for an interview as part of the provisional unlawful presence waiver process?**

All provisional unlawful presence waiver applicants are required to appear at a USCIS Application Support Center for biometrics collection. Generally, USCIS does not require provisional unlawful presence waiver applicants to appear for an interview but may schedule an interview for an applicant if the facts in a particular case warrant further inquiry and review.

**What documents will I be required to file with my application for a provisional unlawful presence waiver?**

The Form I-601A and its instructions describe the types of documents you need to submit with your provisional unlawful presence waiver application. Failure to follow the instructions on the form, including but not limited to the failure to submit required documentation, may result in your application being rejected or denied.

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## Am I eligible for a provisional unlawful presence waiver if I am in removal proceedings?

Only certain individuals in removal proceedings are eligible for a provisional unlawful presence waiver. Individuals who are immediate relatives of U.S. citizens may be eligible for a provisional unlawful presence waiver while in removal proceedings, if the removal proceedings:

- Are administratively closed; **and**
- Have not been re-calendared as of the date of filing the I-601A.

You still must meet all the requirements for the provisional unlawful presence waiver, including the requirement that you have an immigrant visa case pending with DOS and have already paid the immigrant visa processing fee. You should also notify DOS of your intention to file the provisional unlawful presence waiver.

Although you are in removal proceedings, the application for a provisional unlawful presence waiver is filed with USCIS. Include a copy of the administrative closure order with your application.

### **NOTE:**

*If your I-601A is approved, your removal proceedings should be terminated or dismissed **before** you depart the United States to avoid delays in your immigrant visa processing and to avoid the risk that you may be found inadmissible on other grounds.*

*After you receive an approval notice for your provisional unlawful presence waiver, you and/or your legal representative should contact the Principal Legal Advisor for the Office of the Chief Counsel at U.S. Immigration and Customs Enforcement (ICE) to make arrangements to have your removal proceedings terminated or dismissed. Do not contact ICE until after USCIS approves your Form I-601A. A list of the ICE Chief Counsel phone numbers is available on the internet at: <http://www.ice.gov/contact/opla/>. When you contact ICE, you should have a copy of your I-601A approval notice available for ICE's review.*

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## **I Have Questions About Filing Concurrent Applications or Filing for Related Benefits.**

### **Will I be able to file the provisional unlawful presence waiver application concurrently with my Form I-130 or Form I-360?**

No. You must have an approved immediate relative petition to apply for the provisional unlawful presence waiver.

### **Will I be able to file the provisional unlawful presence waiver application concurrently with my Form I-212, Application for Permission to Reapply for Admission into the United States after Removal?**

No. Aliens who must request permission to reenter the United States after removal are not eligible for the provisional unlawful presence waiver. USCIS will not accept concurrent filings of the Form I-601A and Form I-212.

### **If I get a provisional unlawful presence waiver, can I adjust my status without leaving the United States?**

No. If USCIS approves your provisional unlawful presence waiver application, you are still required to leave the United States to attend your immigrant visa interview with a DOS consular officer in order for the waiver to take effect and for you to be granted an immigrant visa (if eligible).

### **If I have a pending request for a provisional unlawful presence waiver or if I receive an approved provisional unlawful presence waiver, will I be able to work, travel, or receive any other interim benefits?**

No. The filing or approval of a provisional unlawful presence waiver will not affect your current immigration status in the United States. A pending or approved provisional waiver also will NOT:

- Provide interim benefits such as employment authorization or advance parole;
- Provide a lawful status;
- Stop the accrual of unlawful presence;
- Provide protection from removal;
- Remove the requirement to depart the United States to seek an immigrant visa; or
- Guarantee immigrant visa issuance or admission to the United States.

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## **I Have Questions About Consular Processing.**

**If I have already filed a Form I-601, Application for Waiver of Grounds of Inadmissibility from outside the United States, will I be able to apply for a provisional waiver?**

No. The provisional unlawful presence waiver process only applies to individuals who are physically present in the United States. If you have already filed your Form I-601 from outside the United States, it means that you have already attended your immigrant visa interview and that a consular officer determined that you are inadmissible to the United States and ineligible for the immigrant visa unless your Form I-601 application is approved. You should wait for USCIS's decision on your Form I-601A.

In addition, under certain circumstances, if an individual who is found inadmissible based on the unlawful presence bars or for other reasons, reenters the United States without being inspected and admitted or paroled, that individual may be ineligible for future immigration benefits, including a provisional unlawful presence waiver.

**What will happen at my consular interview if I present an approved provisional unlawful presence waiver?**

DOS must determine whether you are admissible to the United States and eligible for an immigrant visa. If the DOS consular officer determines that you are otherwise admissible to the United States, in light of the approved Form I-601A, DOS will issue you an immigrant visa. The provisional unlawful presence waiver becomes permanent once the consular officer determines that you are eligible for the immigrant visa and issues you an immigrant visa.

**What will happen at the consular interview if I present an approved provisional unlawful presence waiver but the consular officer determines I have other grounds of inadmissibility?**

If the consular officer determines that you are subject to other grounds of inadmissibility, the approved provisional unlawful presence waiver is automatically revoked. However, you may still file a Form I-601, Application for Waiver of Grounds of Inadmissibility, with USCIS after your immigrant visa interview to request a waiver of grounds of inadmissibility, if available at that time.

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## **I Have Questions about the Consequences of a Decision**

### **What should I do once my provisional unlawful presence waiver is approved?**

After your provisional unlawful presence waiver is approved, you will need to depart the United States and attend your immigrant visa interview at the designated U.S. Embassy or consulate abroad. If you fail to depart and attend your immigrant visa interview, the provisional unlawful presence waiver will not take effect, DOS may terminate your immigrant visa registration, and the approval of your provisional unlawful presence waiver may no longer be valid.

### **If USCIS denies my request for a provisional unlawful presence waiver, can I file an appeal or a motion to reopen or reconsider?**

No. If USCIS denies your request for a provisional unlawful presence waiver, you cannot file an appeal or a motion to reopen or reconsider the denial. USCIS reserves the right to reopen and reconsider, on its own motion, an approval or a denial of a provisional unlawful presence waiver at any time.

### **What can I do if USCIS denies my request for a provisional unlawful presence waiver or if I withdraw my provisional unlawful presence waiver application before USCIS makes a decision?**

If USCIS denies your request for a provisional unlawful presence waiver, or if you withdraw your provisional unlawful presence waiver application before USCIS makes a decision, you may file a new Form I-601A, in accordance with the form instructions, with the required fees and any additional documentation that you believe establishes your eligibility for the waiver. You can only file a new provisional unlawful presence waiver application if your immigrant visa case is still pending with DOS. You should notify DOS that you intend to file a new I-601A. See the DOS website at [www.state.gov](http://www.state.gov) for more information on how to notify DOS and to find out if your immigrant visa case is still pending with DOS.

Alternatively, you can file a Form I-601, Application for Waiver of Grounds of Inadmissibility with the USCIS Lockbox, after you attend your immigrant visa interview and after the DOS consular officer determines if you are inadmissible to the United States.

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### **Will USCIS use information provided in my request for a provisional unlawful presence waiver to place me in removal proceedings?**

USCIS does not envision initiating removal proceedings or referring provisional unlawful presence waiver applicants to ICE if USCIS approves or denies their requests, or if the applicant withdraws his or her application for a provisional unlawful presence waiver while it is still pending with USCIS.

Pursuant to its existing policy governing issuance of Notices to Appear (NTAs) and referrals to ICE, if your request for a provisional unlawful presence waiver is approved or denied or you withdraw the Form I-601A prior to final adjudication will typically be referred to ICE only if you are considered a DHS enforcement priority – that is, an individual with a criminal history, who has committed fraud, or otherwise poses a threat to national security or public safety.

USCIS will follow the DHS/USCIS NTA issuance policy in effect at the time of the adjudication to determine if removal proceedings should be initiated against a provisional unlawful presence waiver applicant. Furthermore, if USCIS discovers acts, omissions, or post-approval activity that would meet the criteria for NTA issuance or determines that the provisional unlawful presence waiver was granted in error, USCIS may issue an NTA, consistent with DHS/USCIS NTA issuance policy, as well as reopen the provisional unlawful presence waiver approval and deny the waiver request. See [USCIS Policy Memorandum, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Removable Aliens](#) (November 7, 2011).

### **What happens to an approved provisional unlawful presence waiver if I reenter the United States illegally?**

Illegal reentry (entry without being inspected and admitted or paroled) into the United States any time before your immigrant visa is issued will automatically revoke your approved provisional unlawful presence waiver.

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### Form I-601A, Provisional Unlawful Presence Waiver Frequently Asked Questions

#### **I Want to Know the Definition of Terms Related to the Provisional Unlawful Presence Waiver.**

##### **Why does USCIS refer to the unlawful presence waiver as “provisional”?**

USCIS refers to the waiver as “provisional” because it will not take effect until after the applicant departs the United States, appears for his or her immigrant visa interview, and DOS determines that, in light of the approved I-601A, the applicant is otherwise admissible to the United States and eligible for an immigrant visa.

##### **Will the provisional unlawful presence waiver process affect existing standards for unlawful presence and how USCIS determines extreme hardship?**

No. The provisional unlawful presence waiver process will not alter how USCIS determines if an individual qualifies for a waiver of a ground of inadmissibility or how it determines extreme hardship. However, to be eligible for a provisional unlawful presence waiver you must be an immediate relative and establish that the refusal of your admission to the United States would result in extreme hardship to your U.S. citizen spouse or parent and that your application should be approved as a matter of discretion.

##### **How long will an approved provisional unlawful presence waiver be valid?**

An approved provisional unlawful presence waiver will remain valid unless:

- The underlying approved immigrant visa petition (I-130 or I-360) is revoked; or
- DOS terminates the applicant’s immigrant visa registration;

Revocation of an approved immigrant visa petition automatically revokes an approved provisional unlawful presence waiver. The approved provisional unlawful presence waiver also will be automatically revoked if the consular officer determines that the applicant is inadmissible on a ground of inadmissibility other than unlawful presence, or if the applicant, at any time before or after approval of the provisional unlawful presence waiver or before an immigrant visa is issued, reenters or attempts to reenter the United States without being inspected and admitted or paroled.

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